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Honorable John C. Coughenour

DEC 19 2016

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
Plaintiff,

NO. CR15-202JCC

**PLEA AGREEMENT**

v.

GUSTAVO GARCIA-VALENCIA,  
Defendant.

The United States of America, by and through Annette L. Hayes, United States Attorney for the Western District of Washington, and Steven Masada and Grady Leupold, Assistant United States Attorneys for said District, GUSTAVO GARCIA-VALENCIA, and his attorney, Bryan Hershman, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c):

1. **Charges.** Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters a plea of guilty to the following charges contained in the Fourth Superseding Indictment.

1           a.       Conspiracy to Distribute Controlled Substances, a lesser included  
2 offense as charged in Count 1, in violation of Title 21, United States Code, Sections  
3 841(a), 841(b)(1)(C), and 846; and

4           b.       Possession of a Firearm by a Prohibited Person, as charged in  
5 Count 11, in violation of Title 18, United States Code, Section 922(g)(1).

6           By entering pleas of guilty, Defendant hereby waives all objections to the form of  
7 the charging document. Defendant further understands that before entering his guilty  
8 pleas he will be placed under oath. Any statement given by Defendant under oath may be  
9 used by the United States in a prosecution for perjury or false statement.

10          2.       **Elements of Offense.** The elements of the offenses to which Defendant is  
11 pleading guilty are as follows:

12           a.       The elements of Conspiracy to Distribute Controlled Substances, in  
13 violation of Title 21, United States Code, Sections 841(a) and 846, are as follows:

14                   First, beginning at a time unknown, but within the last five (5) years,  
15 and continuing to on or about June 30, 2015, there was an agreement between two or  
16 more persons to distribute controlled substances; and

17                   Second, Defendant became a member of the conspiracy knowing its  
18 object and intending to help accomplish it.

19           b.       The elements of Possession of a Firearm by a Prohibited Person, in  
20 violation of Title 18, United States Code, Section 922(g)(1), are as follows:

21                   First, the defendant knowingly possessed a particular firearm;

22                   Second, that particular firearm had been shipped or transported from  
23 one state to another, or between a foreign nation and the United States; and

24                   Third, at the time the defendant possessed that firearm, the defendant  
25 had been convicted of a crime punishable by imprisonment for a term exceeding one  
26 year.

27          3.       **The Penalties.** Defendant understands that the statutory penalties  
28 applicable to the offenses to which he is pleading guilty are as follows:

1           a.       For the offense of Conspiracy to Distribute Controlled Substances:

2   A maximum term of imprisonment of up to twenty (20) years, a fine of up to one million  
3   dollars (\$1,000,000), a period of supervision following release from prison of at least  
4   three (3) years, and a mandatory special assessment of one hundred dollars (\$100).

5           b.       For the offense of Possession of a Firearm by a Prohibited Person:

6   A maximum term of imprisonment of up to ten (10) years, a fine of up to two hundred  
7   and fifty thousand dollars (\$250,000), a period of supervision following release from  
8   prison of up to three (3) years, and a mandatory special assessment of one hundred  
9   dollars (\$100).

10       If a probationary sentence is imposed, the probation period can be for up to five  
11   (5) years.

12       Defendant agrees that the special assessment shall be paid at or before the time of  
13   sentencing.

14       Defendant understands that supervised release is a period of time following  
15   imprisonment during which he will be subject to certain restrictive conditions and  
16   requirements. Defendant further understands that if supervised release is imposed and he  
17   violates one or more of the conditions or requirements, Defendant could be returned to  
18   prison for all or part of the term of supervised release that was originally imposed. This  
19   could result in Defendant's serving a total term of imprisonment greater than the statutory  
20   maximum stated above.

21       Defendant understands that as a part of any sentence, in addition to any term of  
22   imprisonment and/or fine that is imposed, the Court may order Defendant to pay  
23   restitution to any victim of the offense, as required by law.

24       Defendant further understands that a consequence of pleading guilty may include  
25   the forfeiture of certain property either as a part of the sentence imposed by the Court, or  
26   as a result of civil judicial or administrative process.

27       Defendant agrees that any monetary penalty the Court imposes, including the  
28   special assessment, fine, costs, or restitution, is due and payable immediately and further



1 agrees to submit a completed Financial Statement of Debtor form as requested by the  
2 United States Attorney's Office.

3       4.     **Drug Offenses - Program Eligibility.** Defendant understands that by  
4 pleading guilty to a felony drug offense, Defendant will become ineligible for certain  
5 food stamp and Social Security benefits as directed by Title 21, United States Code,  
6 Section 862a.

7       5.     **Enhanced Penalty.** Pursuant to this Plea Agreement, and conditioned  
8 upon Defendant's fulfillment of all of its terms and conditions, the United States Attorney  
9 agrees not to file an enhanced penalty information alleging Defendant's prior felony drug  
10 conviction pursuant to 21 U.S.C. § 851.

11       6.     **Immigration Consequences.** Defendant recognizes that pleading guilty  
12 may have consequences with respect to his immigration status because he is not a citizen  
13 of the United States. Under federal law, a broad range of crimes are grounds for removal,  
14 including the offense to which Defendant is pleading guilty, and some offenses make  
15 removal from the United States presumptively mandatory. Removal and other  
16 immigration consequences are the subject of a separate proceeding, however, and  
17 Defendant understands that no one, including his attorney or the district court, can predict  
18 to a certainty the effect of his conviction on his immigration status. Defendant  
19 nevertheless affirms that he wants to plead guilty regardless of any immigration  
20 consequences that his guilty plea may entail, even if the consequence is his mandatory  
21 removal from the United States.

22       7.     **Rights Waived by Pleading Guilty.** Defendant understands that by  
23 pleading guilty, he knowingly and voluntarily waives the following rights:

- 24           a.     The right to plead not guilty and to persist in a plea of not guilty;  
25           b.     The right to a speedy and public trial before a jury of his peers;  
26           c.     The right to the effective assistance of counsel at trial, including, if  
27 Defendant could not afford an attorney, the right to have the Court appoint one for him;  
28

1 d. The right to be presumed innocent until guilt has been established  
2 beyond a reasonable doubt at trial;

3 e. The right to confront and cross-examine witnesses against Defendant  
4 at trial;

5 f. The right to compel or subpoena witnesses to appear on his behalf at  
6 trial;

7 g. The right to testify or to remain silent at trial, at which trial such  
8 silence could not be used against Defendant; and

9 h. The right to appeal a finding of guilt or any pretrial rulings.

10 8. **Ultimate Sentence.** Defendant acknowledges that no one has promised or  
11 guaranteed what sentence the Court will impose.

12 9. **Statement of Facts.** The parties agree on the following facts. Defendant  
13 admits he is guilty of the charged offense or offenses:

14 For a period of time within the last five years, the defendant GUSTAVO  
15 GARCIA-VALENCIA knowingly and intentionally entered into an agreement  
16 with others to distribute controlled substances, including heroin and  
17 methamphetamine, within the Western District of Washington and elsewhere.  
18 More specifically, GARCIA-VALENCIA, with others, distributed drugs in  
19 Western Washington and elsewhere. For example, in furtherance of the  
20 conspiracy, on May 6, 2015, GARCIA-VALENCIA met with an associate in  
21 Marysville, Washington, and acquired samples of heroin for re-distribution. ~~The~~  
22 ~~samples related to a prospective larger heroin delivery.~~ On May 8, 2015,  
23 GARCIA-VALENCIA and an associate went to a residence in Mount Vernon,  
24 Washington, where they obtained drugs from a load vehicle used by the  
25 conspiracy, which was intended for further distribution.

26 On June 30, 2015, investigators conducted a warrant search of GARCIA-  
27 VALENCIA's residence, located at 18808 SR 530 NE, Arlington, Washington.  
28 Investigators arrested GARCIA-VALENCIA and located packaging material, wire  
transfer receipts, and numerous cell phones, including the device used to  
communicate with his aforementioned associate. Investigators also recovered two  
firearms, namely, an Izhmash, IZH-70, .380 ACP handgun (serial number:  
BAC1642), with a silencer, from the master bedroom, and an Izhmash, IJ70-  
18AH, 9mm Makarov handgun (importer serial number: RT02342), with a flash



1 suppressor, from the laundry room, ammunition, and a holster. Both firearms had  
2 been shipped and transported between a foreign nation and the United States.

3 At the time he knowingly possessed the firearms, GARCIA-VALENCIA  
4 had been convicted of a crime punishable by imprisonment for a term exceeding  
5 one year, namely, Possession of Controlled Substance (cocaine), in San Mateo  
6 County Superior Court, California, and thus was a person prohibited from  
possessing such weapons.

7 The parties further agree that the Court may consider additional facts contained in  
8 the Presentence Report (subject to standard objections by the parties) and/or that may be  
9 presented by the United States or Defendant at the time of sentencing, and that the factual  
10 statement contained herein is not intended to limit the facts that the parties may present to  
11 the Court at the time of sentencing.

12 10. **Sentencing Factors.** The parties agree that the following Sentencing  
13 Guidelines provisions apply to this case:

14 a. With regard to Count 1, a base offense level of 30, pursuant to  
15 USSG § 2D1.1(c)(4), corresponding to a quantity of methamphetamine and heroin  
16 equivalent to at least 1,000 kg but less than 3,000 kg of marijuana;

17 b. A two-level increase, pursuant to USSG § 2D1.1(b)(1), based upon  
18 the possession of a dangerous weapon (including a firearm); and,

19 c. A three-level reduction for acceptance of responsibility, conditioned  
20 upon Defendant's fulfillment of the requirements stated at USSG § 3E1.1.

21 The parties agree they are free to present arguments regarding the applicability of  
22 all other provisions of the United States Sentencing Guidelines. Defendant understands,  
23 however, that at the time of sentencing, the Court is free to reject these stipulated  
24 adjustments, and is further free to apply additional downward or upward adjustments in  
25 determining Defendant's Sentencing Guidelines range.

26 11. **Sentencing Recommendation Regarding Imprisonment.** Pursuant to  
27 Federal Rule of Criminal Procedure 11(c)(1)(B), the United States agrees to recommend  
28 that the appropriate term of imprisonment to be imposed by the Court at the time of

1 sentencing is a term no greater than sixty-six (66) months. Defendant may recommend  
2 any sentence authorized by law. Unless otherwise set forth in this agreement, both  
3 parties remain free to present arguments regarding other aspects of sentencing, such as  
4 the computation of the guidelines range, the term and conditions of supervised release,  
5 fines, and restitution.

6 Defendant understands that the parties' recommendations are not binding on the  
7 Court and the Court may reject the recommendation of the parties and may impose any  
8 term of imprisonment up to the statutory maximum penalty authorized by law.

9 Defendant further understands that he cannot withdraw his guilty plea simply because of  
10 the sentence imposed by the district court.

11 12. **United States Sentencing Guidelines.** Defendant understands and  
12 acknowledges that the Court must consider the sentencing range calculated under the  
13 United States Sentencing Guidelines and possible departures under the Sentencing  
14 Guidelines together with the other factors set forth in Title 18, United States Code,  
15 Section 3553(a), including: (1) the nature and circumstances of the offense; (2) the  
16 history and characteristics of the defendant; (3) the need for the sentence to reflect the  
17 seriousness of the offense, to promote respect for the law, and to provide just punishment  
18 for the offense; (4) the need for the sentence to afford adequate deterrence to criminal  
19 conduct; (5) the need for the sentence to protect the public from further crimes of the  
20 defendant; (6) the need to provide the defendant with educational and vocational training,  
21 medical care, or other correctional treatment in the most effective manner; (7) the kinds  
22 of sentences available; (8) the need to provide restitution to victims; and (9) the need to  
23 avoid unwarranted sentence disparity among defendants involved in similar conduct who  
24 have similar records. Accordingly, Defendant understands and acknowledges that:

25 a. The Court will determine applicable Defendant's Sentencing  
26 Guidelines range at the time of sentencing;

27 b. After consideration of the Sentencing Guidelines and the factors in  
28



1 18 U.S.C. § 3553(a), the Court may impose any sentence authorized by law, up to the  
 2 maximum term authorized by law;

3 c. The Court is not bound by any recommendation regarding the  
 4 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines  
 5 range offered by the parties or the United States Probation Department, or by any  
 6 stipulations or agreements between the parties in this Plea Agreement; and

7 d. Defendant may not withdraw his guilty pleas solely because of the  
 8 sentence imposed by the Court.

9 13. **Acceptance of Responsibility.** At sentencing, *if* the district court  
 10 concludes Defendant qualifies for a downward adjustment acceptance for acceptance of  
 11 responsibility pursuant to USSG § 3E1.1(a) and the defendant's offense level is 16 or  
 12 greater, the United States will make the motion necessary to permit the district court to  
 13 decrease the total offense level by three (3) levels pursuant to USSG § 3E1.1(a) and (b),  
 14 because Defendant has assisted the United States by timely notifying the United States of  
 15 his intention to plead guilty, thereby permitting the United States to avoid preparing for  
 16 trial and permitting the Court to allocate its resources efficiently.

17 14. **Forfeiture of Contraband.** Defendant also agrees that if any law  
 18 enforcement agency seized any firearms or other illegal contraband that was in  
 19 Defendant's direct or indirect control, Defendant consents to the administrative forfeiture,  
 20 official use, and/or destruction of said firearms or contraband by any law enforcement  
 21 agency involved in the seizure of these items.

22 15. **Forfeiture of Assets.** Defendant agrees to forfeit to the United States  
 23 immediately all of Defendant's right, title and interest, if any, in any and all property, real  
 24 or personal, that was used, or intended to be used, in any manner or part, to commit or to  
 25 facilitate the commission of the conspiracy to distribute controlled substances, and any  
 26 property constituting, or derived from, any proceeds Defendant obtained, directly or  
 27 indirectly, as the result of this offense, that are subject to forfeiture pursuant to Title 21,  
 28 United States Code, Section 853; and/or any firearms, magazines, and ammunition



1 involved in the commission of a felony firearm offense in violation of Title 18, United  
2 States Code, Section 922(g), including but not limited to:

3           a. Two firearms, a silencer, a flash suppressor, magazines and  
4 accessories, and ammunition seized from 18808 SR 530, Arlington, Washington, on or  
5 about June 30, 2015, to include an Izhmash, IZH-70, .380 ACP handgun (serial number:  
6 BAC1642), and an Izhmash, IJ70-18AH, 9mm Makarov handgun (importer serial  
number: RT02342).

7           Solely for the purposes of forfeiture, Defendant agrees that the above listed assets  
8 are the proceeds of, or were used and intended to be used to facilitate, the unlawful  
9 conspiracy to distribute controlled substances as set forth in Count 1.

10           Defendant agrees to fully assist the United States in the forfeiture of the listed  
11 assets and to take whatever steps are necessary to pass clear title to the United States,  
12 including but not limited to: surrendering title and executing any documents necessary to  
13 effectuate such forfeiture; assisting in bringing any assets located outside the United  
14 States within the jurisdiction of the United States; and taking whatever steps are  
15 necessary to ensure that assets subject to forfeiture are not sold, disbursed, wasted,  
16 hidden, or otherwise made unavailable for forfeiture. Defendant agrees not to file a claim  
17 to any of the listed property in any civil forfeiture proceeding, administrative or judicial,  
18 which may be initiated.

19           The United States reserves its right to proceed against any remaining assets not  
20 identified in this Plea Agreement, including any property in which Defendant has any  
21 interest or control, if said assets, real or personal, tangible or intangible, constitute or are  
22 traceable to proceeds or facilitated violation of Title 21, United States Code, Section 841  
23 *et seq.*

24           **16. Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,  
25 the United States Attorney's Office for the Western District of Washington agrees not to  
26 prosecute Defendant for any additional offenses known to it as of the time of this  
27 Agreement that are based upon evidence in its possession at this time, and that arise out  
28 of the conduct giving rise to this investigation. In this regard, Defendant recognizes the

1 United States has agreed not to prosecute all of the criminal charges the evidence  
2 establishes were committed by Defendant solely because of the promises made by  
3 Defendant in this Agreement. Defendant agrees, however, that for purposes of preparing  
4 the Presentence Report, the United States Attorney's Office will provide the United  
5 States Probation Office with evidence of all conduct committed by Defendant.

6 Defendant agrees that any charges to be dismissed before or at the time of  
7 sentencing were substantially justified in light of the evidence available to the United  
8 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant  
9 with a basis for any future claims under the "Hyde Amendment," Pub. L. No. 105-119  
10 (1997).

11 **17. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that if  
12 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea  
13 Agreement and Defendant may be prosecuted for all offenses for which the United States  
14 has evidence. Defendant agrees not to oppose any steps taken by the United States to  
15 nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea  
16 Agreement. Defendant also agrees that if Defendant is in breach of this Plea Agreement,  
17 Defendant has waived any objection to the re-institution of any charges in the Indictment  
18 that were previously dismissed or any additional charges that had not been prosecuted.

19 Defendant further understands that if, after the date of this Agreement, Defendant  
20 should engage in illegal conduct, or conduct that violates any conditions of release or the  
21 conditions of his confinement, (examples of which include, but are not limited to,  
22 obstruction of justice, failure to appear for a court proceeding, criminal conduct while  
23 pending sentencing, and false statements to law enforcement agents, the Pretrial Services  
24 Officer, Probation Officer, or Court), the United States is free under this Agreement to  
25 file additional charges against Defendant or to seek a sentence that takes such conduct  
26 into consideration by requesting the Court to apply additional adjustments or  
27 enhancements in its Sentencing Guidelines calculations in order to increase the applicable  
28 advisory Guidelines range, and/or by seeking an upward departure or variance from the



1 calculated advisory Guidelines range. Under these circumstances, the United States is  
2 free to seek such adjustments, enhancements, departures, and/or variances even if  
3 otherwise precluded by the terms of the plea agreement.

4 **18. Waiver of Appellate Rights and Rights to Collateral Attacks.**

5 Defendant acknowledges that by entering the guilty plea(s) required by this plea  
6 agreement, Defendant waives all rights to appeal from his conviction and any pretrial  
7 rulings of the court. Defendant further agrees that, provided the court imposes a custodial  
8 sentence that is within or below the Sentencing Guidelines range (or the statutory  
9 mandatory minimum, if greater than the Guidelines range) as determined by the court at  
10 the time of sentencing, Defendant waives to the full extent of the law:

11 a. Any right conferred by Title 18, United States Code, Section 3742,  
12 to challenge, on direct appeal, the sentence imposed by the court, including any fine,  
13 restitution order, probation or supervised release conditions, or forfeiture order (if  
14 applicable); and

15 b. Any right to bring a collateral attack against the conviction and  
16 sentence, including any restitution order imposed, except as it may relate to the  
17 effectiveness of legal representation.

18 This waiver does not preclude Defendant from bringing an appropriate motion  
19 pursuant to 28 U.S.C. § 2241, to address the conditions of his confinement or the  
20 decisions of the Bureau of Prisons regarding the execution of his sentence.

21 If Defendant breaches this Plea Agreement at any time by appealing or collaterally  
22 attacking (except as to effectiveness of legal representation) the conviction or sentence in  
23 any way, the United States may prosecute Defendant for any counts, including those with  
24 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea  
25 Agreement.

26 **19. Voluntariness of Plea.** Defendant agrees that he has entered into this Plea  
27 Agreement freely and voluntarily and that no threats or promises, other than the promises  
28

21. **Completeness of Agreement.** The United States and Defendant acknowledge that these terms constitute the entire Plea Agreement between the parties. This Agreement binds only the United States Attorney's Office for the Western District of Washington. It does not bind any other United States Attorney's Office or any other office or agency of the United States, or any state or local prosecutor.

Dated this 19<sup>th</sup> day of December, 2016.

BRYAN HERSHMAN  
Attorney for Defendant

SARAH Y. VOGEL  
Assistant United States Attorney

STEVEN MASADA  
GRADY LEUPOLD  
Assistant United States Attorney